

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LARRY J. CASEY,
CURTIS G. LENOUE
and TODD R. PERSON

Appeal No. 96-1668
Application 08/231,258¹

ON BRIEF

Before THOMAS, KRASS and BARRY, Administrative Patent Judges.
THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's
final rejection of claims 1 to 3 and 5 through 8, which
constitute all the claims on appeal.

¹ Application for patent filed April 22, 1994.

Appeal No. 96-1668
Application 08/231,258

Representative claim 1 is reproduced below:

1. A tape cartridge cover for use with an erasure preventing device, wherein the erasure preventing device comprises an end portion, wherein the end portion has an opening, wherein the cover comprises:

a primary wall;

a rear wall;

two side walls;

a front wall having an opening which is adapted to interact with a cartridge drive system; and

means, located adjacent the front wall opening, for holding the erasure preventing device, wherein the holding means comprises a boss for receiving the end portion of the erasure preventing device, and a post located within the boss and extendable into the opening in the end portion of the erasure preventing device less than half way into the erasure preventing device.

The reference relied on by the examiner is:

Sawada		
(Japanese Patent)(Sony)	5-36233 ²	Feb. 12, 1993

² Our understanding of this reference is based upon a translation provided by the Scientific and Technical Information Center of the Patent and Trademark Office. For purposes of consistency with the positions of the examiner and appellants we shall consider and refer to this reference as Sony. A copy of the translation is enclosed with this decision.

Appeal No. 96-1668
Application 08/231,258

Claims 1 to 3 and 5 through 8 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon appellants' admitted prior art in view of Sony.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and the answer for the respective details thereof.

OPINION

We reverse the stated rejection of all claims on appeal under 35 U.S.C. § 103 since we agree with appellants' basic urging that based upon the collective teachings of the admitted prior art and Sony, the artisan would not have found it obvious to have placed a post or shaft within a boss assembly of the admitted prior art based upon the teachings and showings in Sony.

Sony's erasure prevention device in the cassette shown in this reference comprises the display knob portion 13 in Figure 6 and the detection dial 16 shown in Figures 7 and 8, which two portions 13 and 16 mate by means of engaging step units 10 in Figure 6 and 17 in Figure 7. The assembly is placed upon the shaft or axle pin 26 for rotation as shown from a side

view in Figure 4 and from a top view in Figures 3 and 5. Note the translation pages 8 and 9 and the discussion at the bottom of page 10 and the top of page 11.

We do not agree with the examiner's rationale expressed at the bottom of page 4 of the answer that placing a shaft or pivot or post such as post 26 in Sony within the boss 70 of the admitted prior art in Figure 5 of the specification as filed would have been obvious to the artisan since, according to the examiner, it would have provided a more stable pivot for the rotational erasure preventing device. It appears to us that the artisan would have well appreciated that the prior art starting point cartridge relies upon bosses in the top and bottom portions into which the cylindrical thumb wheel 58 would rotate. It would appear to us to have been basically stable for its known purposes in use. The end of representative claim 1 on appeal indicates that the post located within the boss is utilized to align the cover to the erasure preventing device during assembly. There are no teachings in Sony that would have so indicated that the pin or post 26 aides in the assembly of the device. Significantly,

there are no bosses in the top and bottom covers 1 and 2 in the Sony device as well.

We, therefore, agree generally with appellants' position at page 6 of the brief that the pin 26 in Sony appears to be fixed only to the base and extends almost to the top surface of the top cover 1. The erasure preventing member 8 appears to be positioned to rotate freely about the post or pin 26. The comparable pin appears to be in the cover 1 to support Sony's thumb wheel-like device 8. From the teaching in Sony it appears that a post similar to post 26 could have been added to the boss assembly of the admitted prior art tape cartridge, but it would not have been obvious in our view for the artisan to have done so in light of the collective teachings and showings relied upon.

We are also unpersuaded by the examiner's reasoning expressed at pages 5 and 6 of the answer as to the extent or length of the post recited in the claim being less than half way into the erasure preventing device as set forth at the end of representative claim 1 on appeal. The claimed length of the post would not have been obvious in our view as a result of routine optimization as urged by the examiner, since there

appears no need to optimize or change the length at all. The assembled unit 8 comprising the elements of Figures 6 and 8 as explained earlier indicates that the two halves of the analogous erasure preventing device 8 in Sony would have to mate somewhere in the midpoint along the shaft because of the mating action of the engaging step units 10 and 17 in these figures. Figure 4 of Sony appears to show its substantially full length. As such, there was a great need in Sony for the shaft to have been as long as possible to support the upper portion 13 in Figure 6 on and as mated to the lower portion 16 of element 8 as shown in Figure 7. The artisan would have well appreciated that the length of the shaft would have been that long to support the top 13 and bottom 16 mated halves of rotational body 8 for stable rotation.

Additionally, as pointed out by appellants, Sony does not have top and bottom bosses in the top and bottom covers to aid in the support of the rotatability of the analogous erasure preventing mechanism 8 in Sony. Thus, even if we were to agree with the examiner that it would have been obvious to have added a post such as post or axle 26 from Sony into the admitted prior art cover boss 70 in specification prior art

Appeal No. 96-1668
Application 08/231,258

Figure 5, we conclude that the artisan would not have found it obvious to have made its extent or height less than half way into the erasure preventing device for purposes of aligning the cover during assembly as required at the end of representative claim 1 on appeal.

Since we reverse the rejection of independent claim 1, we also reverse the rejection of its respective dependent claims 2, 3 and 5. Since the examiner does not offer any additional rationale for independent claims 6 through 8, we also reverse the rejection of them, in addition to noting that the same essential structural features recited in independent claim 1 are present in each of these independent claim as well.

In view of the foregoing, the decision of the examiner rejecting claims 1 through 3 and 5 through 8 under 35 U.S.C. § 103 is reversed.

REVERSED

Appeal No. 96-1668
Application 08/231,258

	JAMES D. THOMAS)	
	Administrative Patent Judge)	
)	
)	
)	
	ERROL A. KRASS)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	LANCE LEONARD BARRY)	
	Administrative Patent Judge)	

JDT/cam

Appeal No. 96-1668
Application 08/231,258

Charles D. Levine
3M Office of Intellectual Property Counsel
P. O. Box 33427
St. Paul, MN 55133-3427